80-267

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

..... Term, ...

No. .....

JAMES P. MANNING,

Petitioner,

VS.

THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Was the information contained in the affidavit in support of the search warrant at issue herein insufficient to support the warrant in that the information was stale, being 13 days old, and no probable cause existed on November 8, 1978, to believe that contraband would be found at Petitioner's address?

2. Did the Magistrate improperly consider uncorroborated and unreliable statements by Petitioner's Co-Defendant in issuing the said warrant, and absent said statements, was the remaining information insufficient to give the Magistrate probable cause to believe that contraband was present at Appellant's address?

TOPICAL INDEX

page

Jurisdiction. 2

Constitutional Provisions Involved. 2

Questions Presented for Review. 3

Statement of the Case. 3

Reasons for Granting the Writ. 6

A. Delay in Preparation of the Affidavit in Support of the Search Warrant Made it Unreasonable to Conclude Probable Cause Still Existed to Search Petitioner's Residence. 6

B. The Affidavit is Insufficient Because it Lacked Facts from Which the Magistrate Court have Reasonably Concluded That the Information was Credible or His Information Reliable. 17

Conclusion. 25

Affidavit of Service. 26, 27

Opinion of the Court of Appeal of the State of California, First Appellate District. ..... Appendix A

Affidavit in Support of Search Warrant. ..... Appendix B

Search Warrant. ..... Appendix C

TABLE OF AUTHORITIES CITED

Cases

page

Aguilar vs. Texas, 378 US 108, 114-115 (1964) 17, 19

Alexander vs. Superior Court, 9 Cal. 3d 387, 393 (1973) 8

Bastida vs. Henderson, 487 F. 2d 860, 864 (5th Cir. 1973) 13

Commonwealth vs. Eazar, 312 A. 2d 398, 400 (1973, Penn. Sup. Ct.) 14

Commonwealth vs. Jackson, 337 A. 2d 582, 585 (1975, Penn. Sup. Ct.) 14

Commonwealth vs. Novak, 335 A. 2d 773, 776 (1975, Penn. Sup. Ct.) 14, 15

Durham vs. United States, (9th Cir. 1968) 403 F. 2d 190, 194 FN. 6 8

Ming vs. Superior Court, 13 Cal. App. 3d 206, 213 (1976) .. 18

People vs. Hernandez, 45 Cal. App. 3d 581, 586 (1974) 9

People vs. Lara, 67 Cal. 2d 365, 374-375 (1967) 18

People vs. Schulle, 51 Cal. App. 3d 809, 819 (1976) 18

People vs. Scoma, 71 Cal. 2d 332, 338-339 (1969) 20

People vs. Scott, 259 Cal. App. 2d 268, 277-278 (1968) 10

People vs. Sheridan, 2 C.A. 3d 483, 490 (1969) 8

People vs. Siemieniec, 118 N.W. 2d 430, 431 (1962, Sup. Ct. of Mich.) 15

People vs. Smith, 17 Cal. 3d 845, 851 (1976) 18, 21

People vs. Talley, 65 Cal. 2d 830, 835-836 (1967) 18

People vs. Willson, 268 C.A. 2d 581, 588-589 (1968) 10

People vs. Wright, 116 N.W. 2d 168 (1962, Sup. Ct. of Mich.) 15

Rider vs. United States, 355 F. 2d 192 (5th Cir. 1966) 12

Sgro vs. United States, 287 US 206, 210 (1932) 6, 8

United States vs. Brinklow, 560 F. 2d 1004, 1006 (10th Cir. 1977) 13

TABLE OF AUTHORITIES CITED (continued)

Cases

page

United States vs. Evans, 552 F. 2d 1119, 1121-2 (5th Cir. 1976) 9, 14

United States vs. Guinn, 454 F. 2d 29 (5th Cir. 1972) 12

United States vs. Hyde, 574 F. 2d 856, 865-6 (5th Cir. 1978) 14

United States vs. Steeves, 525 F. 2d 33, 36 (8th Cir. 1975).... 13

United States vs. Ventresca, 380 US 102, 111 (1965) 18

United States vs. Wenrich, 586 F. 2d 482, 491-2 (5th Cir. 1978) 12

Willson vs. Superior Court, 46 Cal. 2d 291, 294-295 (1956) 18

Statutes

California Penal Code §1538.5 ..... 5, 6

28 United States Code §1257(3) 2

Other Authority

United States Constitution

Fourth Amendment 2

Fourteenth Amendment 2

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JURISDICTION

Jurisdiction of this Court is invoked under 28 USC §1257(3), and the Fourth and Fourteenth Amendments to the United States Constitution.

Petitioner's Petition for Hearing to the California Supreme Court was denied without opinion on June 18, 1980. Petitioner was originally sentenced on May 11, 1979, filed a Notice of Appeal on May 18, 1979, and has been in the process of pursuing his state remedies until a final denial of the hearing on June 18, 1980.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

as applied to the states by the Fourteenth Amendment (Section 1) to the United States Constitution:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED FOR REVIEW

1. Was the information contained in the affidavit in support of the search warrant at issue herein insufficient to support the warrant in that the information was stale, being 13 days old, and no probable cause existed on November 8, 1978, to believe that contraband would be found at Petitioner's address?

2. Did the Magistrate improperly consider uncorroborated and unreliable statements by Petitioner's Co-Defendant in issuing the said warrant, and absent said statements, was the remaining information insufficient to give the Magistrate probable cause to believe that contraband was present at Appellant's address?

STATEMENT OF THE CASE

A warrant to search defendant's residence at 1382 Vallejo Drive, San Jose, California, was issued on November 8, 1978. It was based on an affidavit executed by Agent Lofgren on the same date. By the date the warrant was issued, 13 days had passed since the most recent observations contained in the affidavit had been made.

The relevant details of the affidavit follow:

1. On October 20, 1978, Affiant telephoned Petitioner's eventual Co-Defendant, MICHAEL MARASTI, from whom he had made a single previous purchase of cocaine on October 17, 1978. Lofgren talked to MARASTI about making a purchase of cocaine. MARASTI stated that he had seen a pound of cocaine in his "connection's" house on October 20, 1978, and

that he and his connection were available for business during the morning hours.

2. On October 26, 1978, Lofgren arranged to meet with MARASTI. They met later that same day at a parking lot in San Jose, California. MARASTI stated that there were several "grades" of cocaine available; Lofgren told MARASTI which drugs he wanted to buy. MARASTI left, stating that it would take fifteen minutes because his connection lived a couple of blocks away.

3. Other undercover police officers followed MARASTI from the parking lot to 1382 Vallejo Drive, and then from the Vallejo Drive address back to where Lofgren was waiting. The affidavit does not indicate any observation of petitioner, or any statement as to what occurred within the 1382 Vallejo Drive residence.

4. When MARASTI returned to the parking lot, he sold some cocaine to Agent Lofgren. After the transaction, officers followed MARASTI back to the Vallejo Drive address.

5. Lofgren made the affidavit in support of the search warrant on November 8, 1978, thirteen days after his last contact with MARASTI, and thirteen days subsequent to the sole date of observations which connected Marasti's behavior with the Vallejo address.

The search warrant was executed on November 9, 1978, and Agent Lofgren filed a return to search warrant on November 14, 1978, attaching a list of 41 items seized from defendant MANNING'S home, at 1382 Vallejo Drive. These items, which included cocaine and cocaine paraphenalia, Appellant moved to suppress.

On December 12, 1978, defendant MANNING filed a motion to suppress evidence pursuant to California Penal Code Section 1538.5. This motion was heard on February 13, 1979, before the Honorable Homer B. Thompson. The search warrant and affidavit in support thereof were the sole exhibits at the hearing, and no testimony was introduced. The affidavit submitted by Agent Lofgren is set forth at length in Appendix B hereto. The search warrant is set forth at lentgh in Appendix C hereto.

On February 14, 1979, the Court denied defendant's motion in writing as follows:

> "The motion by said defendant pursuant to Penal Code Section 1538.5, to suppress evidence, observations, and fruits, including cocaine, scales, wrapping materials, money, and other physical evidence is hereby denied."

Subsequently, petitioner MANNING changed his plea to guilty and was sentenced. Under the provisions of California Penal Code Section 1538.5, his right to appeal the determination of his motion to suppress was preserved.

Petitioner appealed and California's Court of Appeal, First Appellate District, Division Two, affirmed the lower court on April 25, 1980. Its unpublished opinion is attached hereto. Petitioner's petition for hearing to the California Supreme Court was denied without opinion on June 18, 1980.

Petitioner raised these issues in a proper and timely fashion. They were first raised by a motion to exclude evidence at the Preliminary Hearing conducted November 30, 1978 and December 1, 1978, and following

this a Motion to Suppress under California Penal Code Section 1538.5 was filed and heard. Both motions raised the issues presented herein.

REASONS FOR GRANTING THE WRIT

The writ should be granted in this case to resolve the issues of staleness.

This issue has not been squarely faced since *Sgro vs. United States*, 287 US 206, 210 (1932). Opinions of lower courts vary widely, as will be seen in the cases cited below. Furthermore, Certiorari should be granted to review the issue of when police are entitled to rely on statements made by an untested party personally involved in a crime.

A. Delay in Preparation of the Affidavit in Support of the Search Warrant Made it Unreasonable to Conclude Probable Cause Still Existed to Search Petitioner's Residence.

The information given to the Magistrate by Affidavit on November 8, 1978, showed that Agent Lofgren had conducted two transactions with MARASTI. He purchased one ounce or less of cocaine on October 17, 1978, and October 26, 1978.

The affidavit is silent as to any connection between the transaction on October 17, 1978, and the searched residence. On October 20, 1978, MARASTI told Lofgren on the phone that he had seen in excess of one pound of cocaine at his unidentified "connection's" place and that they were available during the morning hours if Agent Lofgren wanted to purchase cocaine.

On October 26, 1978, MARASTI offered Agent Lofgren a choice of three grades of cocaine. He left Lofgren, indicating he would be back in about fifteen minutes because his connection lived only a couple of blocks away, was followed to 1382 Vallejo Drive, returned, and sold Lofgren some more cocaine.

The affidavit is utterly silent as to any further contacts or transactions by Lofgren or other officers with MARASTI or the Vallejo Drive address between October 26, 1978, and November 8, 1978, when Agent Lofgren finally got around to filing his affidavit and obtaining a search warrant. Neither the affidavit nor the hearing before Judge Thompson contained *any* information tending to excuse or explain this thirteen day delay. Under these circumstances, given the prosecution's sole ability to produce such testimony, it must be assumed that there was no excuse other than sheer failure to act promptly.

MARASTI does not describe or identify the "connection" or "supplier" on any occasion, nor does he specify the supplier's location. The affidavit contains no information from which it can be concluded that the supplier or connection to whose home MARASTI says he is going is the same supplier or connection to whom MARASTI referred in the October 20th conversation. Although Agent Lofgren recites a great deal of experience in the undercover purchase of narcotics, he does not state his opinion or belief based on the transactions or his experience in the field that MARASTI was dealing with only one supplier or that the unidentified person referred to on the 20th and the 26th of October was the same person.

Furthermore, the affidavit is silent on any facts from which it could definitely be concluded that the address visited by MARASTI was a place where cocaine was located or that the occupants of the house knew of its presence. Given the amounts purchased on October 26, 1978, MARASTI could have had the cocaine in his pocket, his glove compartment, or under his seat. The cocaine could also have been contained in a parcel left by MARASTI at the Vallejo Drive residence without informing the residents of the house of its contraband nature.

To uphold the Magistrate's issuance of a search warrant, the court must find that the Magistrate properly concluded from the affidavit that cocaine or drug sales paraphernalia would be present at the Vallejo Drive address thirteen days after the single transaction connected in any way to that residence.

The California Supreme Court stated in *Alexander vs. Superior Court*, 9 Cal. 3d 387, 393 (1973):

> "As a general rule, information is stale, and hence unworthy of weight in the Magistrate's consideration of an affidavit, unless the information consists of 'facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time.' *Sgro vs. United States* (1932) 287 U.S. 206, 210; accord *People vs. Sheridan* (1969) 2 C.A. 3d 483, 490 . . . 'the length of time lapse alone is not controlling since even a brief delay may preclude an inference of probable cause in some circumstances, while in others a relatively long delay may not do so.' *Durham vs. United States* (9th Cir. 1968) 403 F. 2d 190, 194 FN. 6."

The passage of time erodes the basis for reasonable belief that the situation set forth in the affidavit con-

tinues to exist. Many cases have attempted to deal with this problem, and commentators have sometimes ranked the cases based on the number of days involved in the delay. However, a close review of those cases show that, as stated in *Alexander, supra*, each case turns on the entire body of facts made known to the Magistrate. The actual amount of delay must be considered in light of the precision and specificity of the information known to the police, whether it can be deduced from that information that the possession of the contraband or evidence is likely to be continuing, and whether there is any reason for the delay.

Thus, the instant case calls for an evaluation of the information in the affidavit which would lead a reasonable Magistrate to believe that contraband would probably be found on the premises thirteen days after the *only* transaction connected with that residence. This evaluation must be made in light of the nature of the crime being investigated. While a particular delay might not vitiate earlier existing probable cause in the case of goods difficult to dispose of or likely to be retained, the same delay in a case such as this one, involving the ephemeral business of narcotics sales, destroys any probable cause which might have existed on October 26, 1978. See *U.S. v. Evans*, 552 Fed. 2d 1119, 1121-2, (5th Cir. 1976) " . . . transient quality of marijuana . . . "

These matters were further discussed by Justice Kaus in *People vs. Hernandez*, 45 Cal. App. 3d 581, 586 (1974):

> "The freshness of the information on the basis of which a warrant is sought and obtained is one of the factors which determine whether there is a

> probable cause to believe that the articles covered by the warrant will be found at the place that is to be searched. In *People vs. Scott*, 259 Cal. App. 2d 268, 277-278, there was a seven day delay between the last piece of information and the affidavit; however, there was only a four day delay from the date that the contraband was to be found at the location until the affidavit was prepared. Moreover, the warrant was directed at a residence known to be that of the suspect. (*id.* at p. 272.) Similarly, in *People vs. Willson*, 268 C.A. 2d 581, 588-589, the transaction was observed some fourteen days before the affidavit was submitted; however, when the officer later phoned the residence—as here, not listed to the suspect—he was told that the suspect was out of town and would return in a few days, thus justifying both the delay in applyfor the warrant and the inference that the suspect would continue to be at an address not specifically known to be his home."

As indicated, delays can be justified by intervening factors. These cases contrast starkly with the instant case, where there was no information as to a future date when contraband would be located at the premises, and the police made no further investigation which would have justified them in waiting to obtain and execute a warrant.

In *Hernandez* the magistrate was told of an informant who had dealt with a named individual on numerous occasions. The informant had regularly called the phone number of a specified apartment, talked to Ochoa, arranged to purchase narcotics, and purchased narcotics from Ochoa. The information was confirmed by having the informant conduct such a transaction. The phone call was overheard and the transaction observed by police. Thus, unlike the instant situation,

there was definite information of a lengthy course of dealings by Ochoa from the specified apartment.

If the *Hernandez* affidavit presented "few useful data to predict how long Ochoa would continue to sell from the Lynfield Avenue apartment . . . ", the instant case presents even less. Here we have some statements made by a cocaine dealer in the course of a transaction referring to an unspecified "connection," and one trip by the dealer to an observed residence, after which the dealer was found to be in possession of cocaine. No fact stated in the affidavit establishes that MARASTI used this house as a starting point or storage point for cocaine on more than one occasion. The facts stated in the affidavit do not establish that the cocaine was obtained at this residence even on October 26, 1978. One could speculate that MARASTI went to the residence to pick up drugs, but other possibilities also suggest themselves. Unlike *Hernandez,* the police had not listened to a direct contact with a known seller of contraband made at the residence. Based on all of these factors, it is apparent that the twelve day delay held in *Hernandez* to be "on the fringe of unreasonableness" was justified by additional facts not present in the instant case. The delay here is a day longer and the facts relating to the location to be searched are much sparser. Thus the information presented to the Magistrate did not rise to the level of probable cause and the warrant was improperly issued.

Even if MARASTI'S statements are included in the warrant information, police had no information of past dealings at the Vallejo address. They knew of only one instance where a visit was made to the address shortly before sale. Even in MARASTI'S statements,

there is nothing to indicate that his "connection" regularly kept cocaine or cocaine sale paraphernalia at his home. Presented to the Magistrate thirteen days later, this information was simply too attenuated to allow the Magistrate to conclude that regular dealings were being conducted at that address, such that thirteen days later there would still be contraband on the premises.

Both state and federal courts have frequently considered the issue of staleness. In this regard, *United States vs. Wenrich*, 586 F. 2d 482, 491-2 (5th Cir. 1978), contains a recent statement on the subject:

> "Out of date information as to a single transaction could be seen to describe no more than an isolated event in the past. Such an affidavit would not create probable cause to believe that similar or other improper conduct is continuing to occur. On the other hand, information which demonstrates a chain of related events covering a broad span of time continuing to current period may furnish a most reliable indicia of present activity, thereby clearly demonstrating that probable cause exists . . . "

One of the factors focused on by federal courts has been whether the items sought were disposable or moveable. *Rider vs. United States*, 355 F. 2d 192 (5th Cir. 1966), approved a search despite the fact that the warwant did not specify the date of the relevant observation. The *Rider* court focused on the "semi-permanent structure of distillery . . . " as justification for belief by the magistrate that the affidavit showed present probable cause. In accord was *U.S. vs. Guinn*, 454 F. 2d 29, (5th Cir. 1972), in which the court stated:

> "The situation would be different had the search revealed removable gambling paraphernalia about

> which no recent information was contained in the affidavit."

The *Guinn* court approved the search because the matter searched for was the immobile license or identification number on a house trailer.

Federal courts have also focused on whether items were incriminating, consumable, or disposable. In *U.S. vs. Steeves*, 525 F. 2d 33, 36 (8th Cir. 1975), the court noted:

> "Obviously, a highly incriminating or consumable item of personal property is less likely to remain in one place as long as an item of property which is not consumable or which is innocuous in itself or not particularly incriminating."

In approving a relatively long delay *U.S. vs. Brinklow*, 560 F. 2d 1004, 1006 (10th Cir. 1977), stated:

> " . . . The articles in controversy were items which could reasonably be expected to be kept in the motor home for extended periods of time . . . Each item was designed for long term use and was likely still to be functional. Each had been seen inside the motor home within the last year, was logically tied to the vehicle by the purpose it served, and was likely to be kept there. None of the items was contraband or inculpatory per se or likely to be disposed of for any other readily apparent reason."

In summarizing the opinions of the various circuits, *Bastida vs. Henderson*, 487 F. 2d 860, 864 (5th Cir. 1973) stated:

> "The Circuits hold that where an affidavit recites a mere isolated violation then it is not unreasonable to believe that probable cause quickly dwindles with the passage of time. On the other hand,

> if an affidavit recites activity indicating protracted or continuous conduct, time is of less significance."

See also *U.S. vs. Evans*, 552 F. 2d 1119, 1121-1122 (1976), in which the court refers to the " . . . transient quality of marijuana . . . " and *U.S. vs. Hyde*, 574 F. 2d 856, 865-6 (5th Cir. 1978), where the court referred to the waning probable cause which occurs over time with " . . . tangible objects which can be quickly carried off . . . " but approved the warrant because " . . . the evidence clearly shows a long standing, ongoing pattern of criminal activity."

Among state courts, the Pennsylvania courts have devoted careful analysis to this problem. They have required more than an impression or conclusion on the part of the officer or magistrate that a particular crime normally is continuing:

> "A police officer's unsubstantiated impression that a particular crime is of the sort which usually is continuing is not sufficient; nor may a magistrate issue a warrant upon such an impression." *Commonwealth vs. Eazer*, 312 A. 2d 398, 400 (1973, Penn. Supreme Ct.)

Commonwealth vs. Jackson, 337 A. 2d 582, 585 (1975, Penn. Supreme Ct.) explicates this further, requiring that " . . . evidence to demonstrate continued criminal activity must establish *actual* continuity of the illegal enterprise." [Emphasis by the court]

Pennsylvania courts have also stressed the ephemeral nature of narcotics being held for sale:

> "The items in this case . . . were narcotics being held for sale, and it was likely that such items would be quickly disposed of." *Commonwealth vs.*

Novak, 335 A. 2d 773, 776 (1975 Penn. Supreme Ct.)

Michigan Courts have also addressed these matters. In *People vs. Siemieniec*, 118 N.W. 2d 430, 431 (1962, Sup. Ct. of Mich.), a warrant was issued four days after a direct observation by an officer who had seen appellant sell illegal liquor. The court held that " . . . such sale alone afforded no ground for a finding of reasonable cause to believe that on September 17, four days later, she was continuing to do so . . . " The court went on to note that " . . . there was nothing in the affidavit presented in this case to indicate that acts observed on Sepember 13, continued to occur on September 17." The search was ruled illegal and the evidence suppressed.

In another Michigan case, *People vs. Wright*, 116 N.W. 2d 168 (1962, Supreme Ct. of Mich.), the magistrate was given direct evidence by affidavit from a person who had entered defendant's premises, purchased alcoholic liquor, observed others doing the same, and observed gambling on the premises. Despite the fact that this obviously described a regularly conducted business, a search warrant for this location issued six days later was found to be inappropriate and the evidence turned up by the search was suppressed. The court stated that the lower court " . . . had nothing before him on which he could conclude that the situation disclosed by Powell's affidavit to have existed on February 18th continued to exist during the intervening period to the date [February 24th] request was made for issuance of the search warrant."

The nature of the information presented to the Magistrate, in conjunction with the length of the delay,

determines whether the information is so stale as to deprive the Magistrate of probable cause to believe that the contraband or evidence will be found on the particular premises. Most, if not all, of the factors discussed by the decisions cited above show that the information in this case was too stale to justify a warrant. These factors can be summarized as follows:

1. The nature of the substance sought: In this case cocaine is not only easily transferable, removable, or disposable, but constitutes highly incriminating contraband, the mobility of which has been noted by a number of courts.

2. The evidence of a continuing operation at that location: Here, such evidence is merely the assumption of the police officer and Magistrate, condemned in *Eazer* and *Jackson*, both *supra*. These cases show that an assumption that because narcotics are involved the operation continues at a particular location is unjustified.

3. Whether the affidavit shows an isolated transaction or a continued and long standing pattern of operation: In this case only one transaction and a few salesman's statements connect the location searched with any trafficking in narcotics. In light of the fact that the evidence was equally consistent with an interpretation that this was a one time location, an accommodation location, an unwitting storage point for narcotics, or simply a location that MARASTI visited while already having the narcotics on him, it must be seen that the only evidence relates to an isolated transaction.

There simply is no showing of the kind of long standing pattern of criminal operation or the kind of semi-

permanent location of immobile equipment that has allowed courts to justify delays in other cases. Rather, the best that can be said for the prosecution's case is that on a single day a person involved in a narcotics transaction with an undercover officer went to the home under suspicious circumstances, and might have obtained narcotics there. When an affidavit is presented thirteen days later, the intrusion into the privacy of a home is simply not justified based on the mere suspicion which arose from this isolated transaction. Therefore, the warrant should not have been granted.

As shown by the opinions cited, this case is ripe for U.S. Supreme Court intervention with definite standards and a definite statement of the applicable law. The Petition for Certiorari should thus be granted.

B. The Affidavit Is Insufficient Because It Lacked Facts From Which The Magistrate Could Have Reasonably Concluded That The Informant Was Credible Or His Information Reliable.

The affidavit in support of a search must fulfill the requirements of the Fourth and Fourteenth Amendments as outlined in *Aguilar vs. Texas*, 378 U.S. 108, 114-115 (1964). Otherwise, matters seized under the search warrant must be excluded as evidence.

It is well settled law that information provided by an informant of unknown reliability is insufficient to establish probable cause, unless the information is independently corroborated in essential respects by such facts, sources, or conclusions as would justify the con-

clusion that reliance on the information was reasonable. *People vs. Talley*, 65 Cal. 2d 830, 835-836 (1967); *People vs. Lara*, 67 Cal. 2d 365, 374-375 (1967).

It should be noted at the outset that Co-defendant MARASTI was an untested informant and did not satisfy any of the criteria which have been established by the courts as sufficient to deem the informant reliable. While the credibility of an informant may be established by including in the affidavit the identity, status, or position of the informant or information he has provided in the past, the affidavit before this Court is devoid of any such information. Nowhere in the present affidavit is there a suggestion of the "good character and reputation of the declarant," characteristics which may be sufficient to justify a finding of credibility. *Willson vs. Superior Court*, 46 Cal. 2d 291, 294-295 (1956). Nor is MARASTI claimed to be a policeman, doctor, or lawyer, each of which is considered per se credible because of the trust placed in his office. (See e.g., *U.S. vs. Ventresca*, 380 U.S. 102, 111 (1965). MARASTI cannot be considered a citizen informant, which is another classification judicially recognized as inherently credible. "In the citizen informer cases, credit is given to the hearsay statement because of lack of any circumstances which would cast doubt on the integrity or motivation of the informant." (*Ming vs. Superior Court*, 13 Cal. App. 3d 206, 213 (1976).) So it follows that "persons criminally involved or disposed are not regarded as citizen informants because they are generally motivated by something other than good citizenship." (*People vs. Smith*, 17 Cal. 3d 845, 851 (1976); and *People vs. Schulle*, 51 Cal. App. 3d 809, 814-815 (1975).)

The affidavit by Agent Lofgren also lacked reference to any prior police experience with MARASTI or any successful "track record" of situations where MARASTI provided information which led to arrests or convictions or which later proved to be correct. The informer who is living on the fringes of criminal life faces more demanding requirements before he can become credible: The affiant must state that the informant has given information in the past which proved reliable. (See, e.g., *Aguilar vs. Texas*, 378 U.S. 108 (1964), where the informant previously had given information resulting in three persons being held to answer at a preliminary hearing.) Thus, there are no grounds for finding the informant credible in general, and the very fact that he is involved in criminal activity, as suggested in the previous cases, militates against his accuracy in the absence of some recognized criteria of credibility.

It is clear that there was nothing from which it could have been concluded that informant MARASTI was reliable or credible. His statement alone would fail to establish probable cause for the issuance of a search warrant unless MARASTI'S information was sufficiently corroborated by other facts or events. Thus we turn to a consideration of whether MARASTI'S statements were adequately corroborated, such that Agent Lofgren had reasonable grounds for relying on the information. This involves a consideration of what is known as the "second prong" of the *Aguilar* test, i.e., whether the information was reliable.

The fact that Agent Lofgren had previously on October 17, 1978, made one purchase of cocaine from MARASTI and that MARASTI on October 26, 1978,

consummated a second sale of cocaine to the officer, is inadequate to establish the reliability of the informant's information. This point is congently made in *People vs. Scoma*, 71 Cal. 2d 332, 338-339 (1969).

In *Scoma* the prosecution contended that an unidentified informant with no past police experience could be corroborated by the fact that narcotics were found in the informant's possession, that the informant's wallet contained a narcotics price list which he said he had furnished to defendant, and that defendant's name and telephone number was obtained from the informant's wallet. The court stated:

> "The foregoing facts provide absolutely no basis upon which the Magistrate could reasonably conclude that the informant's report of illegal activity *on the part of 'Dewey'* was reliable information. Surely the fact that the informant was found to possess narcotics gives no credence to his assertion that he obtained them from one person rather than another. Of no greater assistance is the fact that 'Dewey's' past and present addresses were those provided by the informant; again no inference of criminal activity on 'Dewey's' part may be drawn. [Emphasis supplied by the Court] ...
>
> Equally without value in assessing the reliability of the incriminating information provided by the juvenile are the notes and lists obtained from his wallet. Granting that the lists and notes might have been written before the informant was apprehended or knew that he was going to be interviewed by police, this would show *at most* only that the informant possessed a narcotics price list and that the name and telephone number of the person he accused of illegal activity appeared 'among others' on a list in his wallet. It cannot reasonably be maintained that the list of names and telephone numbers supported the informant's

> accusation of 'Dewey' any more than it would have supported his accusation of any other person on that list.
>
> Thus it appears that none of the facts in the affidavit provide corrobative support for the informer's accusation of illegal activity on the part of 'Dewey.' . . . The affidavit contains absolutely nothing to indicate that additional facts independently known or discovered by the police supported the accusation thereby imparting credit to the informant." (71 Cal. 2d at p. 339-340.)

In *People vs. Smith*, 17 Cal. 3d 845, 853 (1976), similar particularity was required in the confirmation of information supplied by an untested informant. In *Smith* the informant provided information which fell into two categories: (1) Information relating to the location and contents of a paper bag placed in an apartment house trash can, indicating that it contained narcotic debris; and (2) Information relating to the observations of the informant while inside an apartment served by the trash receptacle, stating that large quantities of narcotics and sales paraphernalia were present in the apartment.

Despite the *Smith* informant's complete corroboration as to the location and contents of the bag in the trash can, the *Smith* court went further in its analysis to require some facts corroborating a connection between the bag in the trash receptacle and the apartment in question before the second category of information supplied by the informant, that relating to the activity in the apartment, could be considered corroborated. Without this, the *Smith* court held that the informant's statements about what went on in the apartment were insufficiently corroborated and that the second prong

of the *Aguilar* test was not satisfied—the credibility of the informant or the reliability of the information had not been established.

It is submitted that the Court must examine statements attributed to Co-Defendant MARASTI in Agent Lofgren's affidavit with care. MARASTI'S statements, as related in Lofgren's affidavit, are as follows:

1. "That on October 20, 1978, he had been in his connection's residence and had personally observed well over one pound of two types of cocaine."

2. "He and his connection were available during the morning hours for the purchase of cocaine . . ." in San Jose (stated on October 20, 1978).

3. ". . . There were three grades of cocaine available from his supplier."

4. ". . . It would take about fifteen minutes as his connection lived only a couple of block away." (Both 3 and 4 stated during narcotics transaction on October 26, 1979.)

The affidavit never indicates that MARASTI identified his supplier or "connection" in any fashion. There was no discussion between MARASTI and Lofgren of whether MARASTI operated through more than one supplier, the method of delivery, the continuing nature of MARASTI'S or the supplier's activities, or of anything else relating to the continuity of a drug operation. The sole clue set forth which connected these remarks with Defendant and Appellant MANNING was the fact that on October 26, 1978, the agents followed MARASTI to the Vallejo Drive residence occu-

pied by Defendant MANNING both during and after the narcotics transaction which occurred on that date.

MARASTI'S mere possession of cocaine or sale of it to the officer provided no corroboration of his other allegations directed to the location of the source, or the identity of the supplier, or the nature of the supplier's operation. These allegations, to the extent they did connect plaintiff MANNING or his residence, are required to be corroborated in some other independent fashion before the information can be deemed reliable.

The People contended in the trial court that the reliability of MARASTI'S statements and their inherent trustworthiness was established by the fact that they were against MARASTI'S penal interest. The People dropped this argument in their brief on appeal and instead argued only that the reliability of MARASTI'S information was established through corroborating police observations. The Appellate Court in its decision therefore did not reach or address the question of whether MARASTI'S reliability was established because his statements were against his penal interest. Rather, the Appellate Court accepted the People's argument that assuming MARASTI to be an untested and unreliable informant, the reliability of his information was nonetheless substantiated through corroborating police observations. This finding should be reversed.

Appellant maintains that the purported corroborating facts in the instant case were inadequate to give the police reasonable grounds for believing the information reliable. The corroboration consists of the agent's observations of MARASTI, upon negotiation

for the sale of an ounce of cocaine, driving to the defendant's house, staying about fifteen minutes, and returning and delivering the cocaine. Upon payment for the cocaine, MARASTI was then observed returning to defendant's residence. These observations in themselves were no corroboration at all.

The fact that MARASTI could produce cocaine for sale does not prove his reliability. MARASTI made no direct reference to the house which was searched. None of MARASTI'S statements to the agents referred to a name or address for his connection. He did not give a phone number there, and in fact the officers had ascertained that he resided elsewhere. Seen in this light, the one stop that MARASTI made at the house during a narcotics transaction, for an unknown purpose, does not corroborate his statements.

MARASTI'S stop could have been for a number of innocent reasons, or could have been for the purpose of picking up a small amount of narcotics previously "stashed" in the residence. Of course, stopping at the residence for innocent reasons would not justify a search warrant. Even if he stopped briefly to pick up previously "stashed" narcotics, the court would not be justified in issuing a warrant thirteen days later based on this tenuous contact. In order to corroborate MARASTI'S statements, the police were required to make some further observations to establish a pattern of use of that residence during narcotics transactions, or to establish some guilty knowledge on the part of the people living there. None of this was done, MARASTI was not corroborated, and his information should not have been considered by the Magistrate.

CONCLUSION

For the reasons stated herein, Petitioner respectfully requests this Court to grant a Writ of Certiorari bringing this matter up to hearing and determination.

Respectfully submitted,

MARY EMERY, ESQ.

Attorney for Petitioner.

AFFIDAVIT OF SERVICE

State of California
County of Santa Clara
ss.

I, RUBY L. DENSON, being duly sworn deposes and says:

I am not a member of the bar of the Supreme Court of the United States, and therefore I make this Affidavit of Service. I am the secretary to Mary Emery, who is the counsel for Petitioner in the foregoing Petition for Writ of Certiorari.

That the persons upon whom service was made are the counsel of record for the Respondent, The People of the State of California, in the California courts in the action dealt with in the above-mentioned Petition, or are interested parties with regard thereto, and reside or are doing business within 500 miles of San Jose, California, where I reside and do business.

That on August 15, 1980, I served three copies of the foregoing Petition for Writ of Certiorari upon said counsel and interested parties by enclosing them in sealed envelopes and depositing the envelopes in a United States mail box in San Jose, California, with first class postage thereon prepaid and addressed as follows:

Louis P. Bergna, District Attorney
County of Santa Clara, California
70 West Hedding Street, West Wing
San Jose, California 95110

The Honorable John A. Flaherty
Judge of the Superior Court
County of Santa Clara, California
190 West Hedding Street
San Jose, California 95110

George Deukmejian, Attorney General
Douglas Garibaldi, Deputy Attorney General
State of California
600 State Building
350 McAllister Street
San Francisco, California 94102

Clerk of the Court of Appeal
State of California
First Appellate District
State Building, Room 4154
455 Golden Gate Avenue
San Francisco, California 94102

Clerk of the Supreme Court
State Building, Civic Center
Room 4050
San Francisco, California 94102

All parties required to be served have been served.

EXECUTED this 15th day of August, 1980, at San Jose, California.

RUBY L. DENSON

SUBSCRIBED AND SWORN to
before me, a Notary Public
in and for the above County
and State, this 15th day of
August, 1980.

JEAN GABBARD, Notary Public
Santa Clara County, California
My Commission Expires: 7-15-83.

APPENDIX A

APPENDIX A

OPINION OF THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED
APR 25 1980
Court of Appeal - First App. Dist.
CLIFFORD C. PORTER, Clerk
BY _____ DEPUTY

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES P. MANNING,

Defendant and Appellant.

1 Crim. No. 19704

(Super. Ct. No. 70773)

THE COURT:*

James P. Manning and Michael A. Marasti were charged with three counts of selling cocaine (Health & Saf. Code, § 11352) and one count of conspiracy to sell cocaine (Pen. Code, § 182).[1/] Manning was also charged with unlawful possession of cocaine for sale (Health & Saf. Code, § 11351). Manning pleaded not guilty and moved to suppress the evidence which was seized pursuant to execution of a search warrant at his San Jose residence. After his motion to suppress the evidence was denied, Manning pleaded guilty to the charge of unlawful possession of cocaine for sale. The other charges were dismissed. The court sentenced him to state prison for the median term of three years, but then suspended execution of

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* Before Rouse, Acting P.J., Miller, J., and Smith, J.

1/ Marasti is not a party on this appeal.

the sentence and placed him on probation for three years on condition he serve six months in the county jail, pay a fine of $3,000, a penalty assessment of $750, and perform 300 hours of community service without compensation. On appeal, the general issue is whether the affidavit for issuance of the search warrant was sufficient.

The search warrant in this case was issued by the magistrate on November 8, 1978, based on a nine-page affidavit of Special Agent T. G. Lofgren, and executed the next day. The warrant authorized a search of the house at 1382 Vallejo Drive, San Jose, for cocaine, records of purchase and sale of cocaine, paraphernalia connected with packaging, weighing, cutting and use of cocaine, evidence of occupancy of the residence, and currency with specific serial numbers previously recorded by the officers. The officers seized 41 items, including an assortment of narcotics and drugs, narcotic paraphernalia, and $27,139 in currency found in defendant Manning's wallet.

Defendant argues that the affidavit submitted to the magistrate contained "stale" information and hence was insufficient to support a finding of probable cause that contraband would probably be found at defendant's residence. (See generally, Alexander v. Superior Court (1973) 9 Cal.3d 387, 393; People v. Hernandez (1974) 43 Cal.App.3d 581; Hemler v. Superior Court (1975) 44 Cal.App.3d 430, 434.) The affidavit recited the following critical facts. The affiant had purchased cocaine and marijuana from Marasti on October 17, 1978,

for a price of $1,005. On October 20, the affiant telephoned Marasti in San Jose and discussed the future purchase of one or two ounces of cocaine. Marasti told the affiant that he (Marasti) had been in his "connection's" residence and had personally observed "well over" one pound of two types of cocaine, and that he and his "connection" were available during the morning hours for the sale of cocaine. On October 26, the affiant met with Marasti in San Jose and discussed the purchase of one ounce of cocaine. Marasti told the affiant that three grades of cocaine were available from his supplier, who lived only a couple of blocks away. Marasti left the affiant and drove to the house at 1382 Vallejo Drive, followed by other special agents who saw Marasti enter the house and return to his car about 15 minutes later. The agents followed Marasti back to the shopping center where he met the affiant and delivered an ounce of cocaine plus a bindle of cocaine as a sample. Affiant gave Marasti $1,910 in recorded currency. The agents then observed Marasti return to defendant's residence at 1382 Vallejo Drive.

Defendant argues that the information furnished the magistrate 13 days after the last purchase of cocaine from Marasti on October 26 was stale. We conclude, however, that the magistrate could reasonably find from the foregoing facts that Marasti and his supplier were engaged in continuous sales of cocaine, based on the amount and value of the sales to Agent Lofgren, and therefore the information was not stale for the purpose of issuing a search warrant. (Cf. People v. Thompson

(1979) 89 Cal.App.3d 425, 429-430 [delay of 10 to 16 days]; People v. Hernandez, supra, 43 Cal.App.3d 581 [delay of 12 days].)

Defendant argues that the information received by the affiant from Marasti was insufficient to establish probable cause to believe that the items listed in the warrant would probably be found in defendant's house. Defendant argues that the affidavit was defective in that (1) it lacked facts from which the magistrate could conclude that Marasti was credible or his information reliable (see Aguilar v. Texas (1964) 378 U.S. 108, 114; People v. Hamilton (1969) 71 Cal.2d 176, 179-180; People v. Scoma (1969) 71 Cal.2d 332; Alexander v. Superior Court, supra, 9 Cal.3d 387, 391-393); and (2) Marasti's information was not shown to be reliable because there was insufficient evidence to establish the trustworthiness of Marasti's statements pertaining to his supplier's possession of cocaine.

Although information from an untested informant is not sufficient, by itself, to establish probable cause for issuance of a warrant, such information may be sufficient if it is "corroborated, in essential respects, by other facts, sources or circumstances." (People v. Reeves (1964) 61 Cal.2d 268, 274; People v. Lara (1967) 67 Cal.2d 365, 374-375; People v. Scott (1968) 259 Cal.App.2d 268, 275.) The reliability of an informant can be supplied by the personal observations of the police (see People v. Superior Court (Johnson) (1972) 6 Cal.3d 704, 711-712; People v. Childress (1979) 99 Cal.App.3d

36, 41). Here, Marasti's statements that he obtained cocaine from his supplier who lived "a couple blocks away" were corroborated by the special agents' observations that upon negotiating the sale of an ounce of cocaine to the affiant at the shopping center, Marasti drove to the defendant's house, stayed about 15 minutes, returned to the affiant and delivered the ounce of cocaine. After Marasti was paid $1,910 he returned to defendant's residence.

We conclude that under the circumstances of this case the magistrate could reasonably find that Marasti had obtained the cocaine from the occupant of the house at 1382 Vallejo Drive, and that there was probable cause to believe that cocaine and/or recorded currency would probably be found at that house.

Accordingly, we conclude that the trial court properly denied defendant's 1538.5 motion to suppress the evidence.

Judgment affirmed.

APPENDIX B

APPENDIX B

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

NOV 1 4 1978
J. J. SPECIALE
CLERK OF THE MUNICIPAL COURT
J. J. SPECIALE
Clerk of the Municipal Court
By Debra Farcon
Deputy

MUNICIPAL COURT FOR THE SAN JOSE-MILPITAS JUDICIAL DISTRICT

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 8th day of November, 1978, T. G. LOFGREN, who, on oath, makes complaint, and deposes and says that there is just, probable and reasonable cause to believe, and that he does believe, that there is now on the premises located at 1382 Vallejo Drive, San Jose, California, which premises consist of: a single family residence with attached garage, mustard-beige stucco structure with dark brown trim and asbestos roof tile. The address 1382 Vallejo Drive is in black letters on the garage door;

AND THAT THERE IS NOW IN THE POSSESSION OF MICHAEL ALLEN MARASTI, on his person and in a vehicle described as a 1978 maroon colored Dodge automobile bearing California License Number 412 UFG,

personal property described as follows:

1. Cocaine;
2. Records of purchase and sale of cocaine;
3. Paraphernalia associated with the packaging, weighing, cutting and use of cocaine;
4. Evidence of occupancy of the residence, including but not limited to utility bills, rent receipts, mail, keys;

5. One Hundred Dollar ($100) Federal Reserve Notes as follows: B91847942A, 1974; L40215129A, 1974; F10129609A, 1974; L44245465A, 1974; B71752296A, 1974;

Fifty Dollar ($50) Federal Reserve Notes as follows: C05032895A, 1969A; A09163511A, 1974;

Twenty Dollar ($20) Federal Reserve Notes as follows: L48579989D, 1974; E32018734C, 1974; B72288543F, 1974; L59767545D, 1974; A54959063A, 1974; J75424551A, 1969C; L49378053D, 1974; L45197226A, 1963A, K94306522A, 1974; G72736061C, 1969C; E08539042C, 1969C; L01561296A; 1977; B06081627E, 1974; L96967782B, 1969C; L40586155B, 1969A; L01354771A, 1977; G24251288C, 1969C; L60526051C, 1969C; B58926038F, 1974; L80809250C, 1974;

6. One Hundred Dollar ($100) Federal Reserve Notes as follows: A11844347A, 1974; A10625225A, 1974; B24440164A, 1969C; L43512774A, 1974; J10895892A, 1974; L08934287A, 1969A; J06607890A, 1969C; B65208672A, 1974; L01752854*, 1974; L47825219A, 1974; H11482051A, 1974; E09298337A, 1969C; G18449880A, 1974; J08543447A, 1974; L18039638A, 1969C; L42177323A, 1974; L47893220A, 1974; B91842339A, 1974; G33301104A, 1974;

Ten Dollar ($10) Federal Reserve Note as follows: G73049166D, 1974.

Affiant is a Special Agent of the Bureau of Investigation and Narcotic Enforcement of the California Department of Justice. Your Affiant has been employed as an undercover narcotics agent by the California Department of Justice for approximately 8-1/2 years. During this time your affiant has purchased controlled substances including cocaine on approximately 200 separate occasions. Your affiant has also received formal training in the purchase and identification of controlled substances from the California Department of Justice Police Academy and training in his college level courses pursuant to his studies for a Bachelor of Arts degree from Sacramento State College. Your affiant is and has been an instructor with the California Department of

BERGNA
Attorney
Santa Clara
Cal. 95110
REV 7/71

Justice Advance Training Center teaching local narcotics officers in the techniques of buying controlled substances and case making techniques.

Your affiant is investigating the sale of cocaine which occurred on October 26, 1978, in the city of San Jose, and the sale of cocaine and marijuana which occurred at the Casa de Fruita in Santa Clara County on October 17, 1978.

On October 17, 1978, your affiant, while working in an undercover capacity, met MICHAEL ALLEN MARASTI and personally purchased from said MICHAEL ALLEN MARASTI 13.8 grams of cocaine and 55 grams of marijuana for a total purchase price of $1,005.00. Your affiant paid the $1,005.00 in United States currency and recorded the serial numbers of the bills which he personally gave to the said MICHAEL ALLEN MARASTI on October 17, 1978. The serial numbers recorded by your affiant are:

One Hundred Dollar ($100) Federal Reserve Notes as follows:
B91847942A, 1974; L40215129A, 1974; F10129609A, 1974;
L44245465A, 1974; B71752296A, 1974;

Fifty Dollar ($50) Federal Reserve Notes as follows:
C05032895A, 1969A; A09163511A, 1974;

Twenty Dollar ($20) Federal Reserve Notes as follows:
L48579989D, 1974; E32018734C, 1974; B72288543F, 1974;
L59767545D, 1974; A54959063A, 1974; J75424551A, 1969C;
L49378053D, 1974; L45197226A, 1963A, K94306522A, 1974;
G72736061C, 1969C; E08539042C, 1969C; L01561296A; 1977;
B06081627E, 1974; L96967782B, 1969C; L40586155B, 1969A;
L01354771A, 1977; G24251288C, 1969C; L60526051C, 1969C;
B58926038F, 1974; L80809250C, 1974;

During the conversation with your affiant, MICHAEL ALLEN MARASTI stated that the cocaine was costing him $925.00 and that he wanted to make a $50.00 profit from the cocaine transaction.

The above sale of cocaine and marijuana took place at the Casa de Fruita complex on Highway 152 in Santa Clara County. The actual transfer of the controlled substances took place in a 1978 maroon colored Dodge automobile bearing California License Number 412 UFG, referred to above.

Your affiant has contacted the California Department of Motor Vehicles regarding the ownership of said vehicle. The records of the California Department of Motor Vehicles show the said vehicle is registered to MARASTI LEASE CENTER, 1629 West 16th Street, Merced, California. Your affiant has received information from Merced County Narcotics Officer DONALD HONG that the MARASTI LEASE CENTER is owned and operated by the father of MICHAEL ALLEN MARASTI.

Your affiant personally transported the cocaine and marijuana he purchased on October 17, 1978, from MICHAEL ALLEN MARASTI, to the State of California Regional Crime Laboratory in Fresno, California, and has read the analysis report prepared by Criminalist ASA WILSON, and based upon reading said report is informed and believes that the powder substance has been analyzed to be cocaine and the green leafy material has been analyzed and found to be marijuana. Your affiant personally knows that ASA WILSON has testified for the California Department of Justice in both the Municipal and Superior Courts in the County of Fresno as an expert witness in the identification of controlled substances.

On October 20, 1978, your affiant was in contact with MICHAEL ALLEN MARASTI by telephone. Your affiant recognized the

voice on the other end of the telephone as being that of MICHAEL ALLEN MARASTI. The conversation between affiant and said MICHAEL ALLEN MARASTI concerned the future purchase of one (1) to two (2) ounces of cocaine. MICHAEL ALLEN MARASTI informed your affiant that on October 20, 1978, he had been in his connection's residence and had personally observed well over one (1) pound of two types of cocaine. MICHAEL ALLEN MARASTI said that he and his connection were available during the morning hours, for the purchase of the cocaine if he, your affiant, came to San Jose to make the purchase.

On October 26, 1978, your affiant came to the city of San Jose and contacted the said MICHAEL ALLEN MARASTI at telephone number 297-6099. Your affiant again recognized the voice on the other end of the telephone as being that of MICHAEL ALLEN MARASTI. Your affiant has been informed by his supervisor, WILLIAM MILLER, that he, WILLIAM MILLER, utilizing the facilities of the Pacific Telephone Company, ascertained that the above telephone number is assigned to MICHAEL MARASTI at 2050 Southwest Expressway, Apartment 94, San Jose, California.

During the telephone conversation of October 26, 1978 your affiant arranged to meet said MICHAEL ALLEN MARASTI at a location in downtown San Jose. Your affiant arrived at said location and observed MICHAEL ALLEN MARASTI arriving at the location in the same vehicle utilized by MARASTI during the sale of cocaine on October 17, 1978.

On October 26, 1978, your affiant had a conversation in a coffee shop and at the MARASTI vehicle in the parking lot regarding the purchase of

LUIS P. BERGNA
District Attorney
unty of Santa Clara
n Jose, Cal. 95110

) 5441 REV 7/71

one (1) ounce of cocaine. Your affiant followed MICHAEL ALLEN MARASTI to the parking lot of the Westgate Shopping Center in San Jose. Your affiant again personally contacted MICHAEL ALLEN MARASTI in the Westgage Shopping Center parking lot where your affiant was asked by said MICHAEL ALLEN MARASTI as to what grade of cocaine he wanted to purchase, as the said MICHAEL ALLEN MARASTI stated there were three (3) grades of cocaine available from his supplier. Your affiant gave the said MICHAEL ALLEN MARASTI his order, at which time said MICHAEL ALLEN MARASTI said it would take about fifteen (15) minutes as his connection lived only a couple of blocks away. Your affiant observed MICHAEL ALLEN MARASTI leave the parking lot at Westgage Shopping Center in his Dodge automobile and him return within twenty (20) minutes time in the same Dodge automobile. Your affiant then entered the Dodge automobile and was driven about the immediate area when the said MICHAEL ALLEN MARASTI gave to your affiant a plastic bag presumed to be one (1) ounce of cocaine and a paper bindle presumed to contain a sample of a better quality of cocaine. Your affiant personally handed to MICHAEL ALLEN MARASTI $1,910.00 in United States currency, the serial numbers of which were personally recorded by your affiant. Said serial numbers are:

One Hundred Dollar ($100) Federal Reserve Notes as follows: A11844347A, 1974; A10625225A, 1974; B24440164A, 1969C; L43512774A, 1974; J10895892A, 1974; L08934287A, 1969A; J06607890A, 1969C; B65208672A, 1974; L01752854*, 1974; L47825219A, 1974; H11482051A, 1974; E09298337A, 1969C; G18449880A, 1974; J08543447A, 1974; L18039638A, 1969C; L42177323A, 1974; L47893220A, 1974; B91842339A, 1974; G33301104A, 1974;

ENUNA
ttorney
nta Clara
a 95110

Ten Dollar ($10) Federal Reserve Note as follows: G73049166D, 1974.

MICHAEL ALLEN MARASTI informed your affiant that $1,880.00 was to pay for the cocaine and that $30.00 was to be his commission.

After the said purchase was completed, your affiant exited the automobile in the parking lot at Westgate Shopping Center.

Your affiant has read an investigation report prepared by his Field Supervisor, WILLIAM MILLER, and based upon reading said report is informed and believes that Surveillance Officers FOX, MILLER and DOANE, all employees of the California Department of Justice, observed MICHALE ALLEN MARASTI leave the location of the Westgage Shopping Center where MICHAEL ALLEN MARASTI had just met your affiant and followed him to 1382 Vallejo Drive, San Jose. Agent FOX observed MICHAEL ALLEN MARASTI park his Dodge automobile, exit it, and go to the porch of said residence and knock on the door. Agent MILLER observed MICHAEL ALLEN MARASTI walking away from 1382 Vallejo Drive, San Jose, approximately fifteen (15) minutes later. The above officers followed MICHAEL ALLEN MARASTI back to the Westgage Shopping Center parking lot and observed MICHAEL ALLEN MARASTI contact your affiant and observed your affiant enter the MARASTI vehicle and drive about the area for several minutes. The above officers further observed your affiant exit the MARASTI vehicle and again followed the MARASTI vehicle to 1382 Vallejo Drive, San Jose, where Agent DOANE observed MICHAEL ALLEN MARASTI again approach the front door of the residence at 1382 Vallejo Drive, San Jose.

Surveillance was terminated at this time.

Your affiant personally transported the cocaine he purchased from MICHAEL ALLEN MARASTI on October 26, 1978, to the State of California Regional Crime Laboratory in Fresno, California, and has read the analysis prepared by Criminalist RODNEY ANDRUS, and based upon reading said reports is informed and believes that the powder contained within the plastic baggie and the paper bindle contain cocaine.

Your affiant states that he contacted Special Agent Pine currently assigned to the San Jose Field Office, California Department of Justice and was informed by Special Agent PINE that on November 1, 1978, Special Agent PINE, utilizing the facilities of Pacific Gas and Electric ascertained that utilities are in service at 1382 Vallejo Drive, San Jose, to a JIM P. MANNING and that he has had service since October 5, 1977. Agent PINE further informed your affiant that Agent PINE, on November 2, 1978, utilizing the facilities of the Pacific Telephone Company,ascertained that telephone service for 1382 Vallejo Drive, San Jose, is in the name of TOM MANNING. Your affiant has personally checked the 1978 telephone directory for the city of San Jose, on November 7, 1978, and observed that a telephone number is listed under the name of TOM MANNING with an address of 1382 Vallejo Drive.

Agent PINE also informed your affiant that he contacted the California Department of Motor Vehicles on November 3, 1978,

and was informed that their records show a California Driver's License issued to JAMES PATRICK MANNING with an address of 1382 Vallejo Drive, San Jose.

Your affiant has personally observed the person of MICHAEL ALLEN MARASTI on at least two (2) occasions and observed that he is a white, male adult, 5 feet 10 inches in height, 180 pounds, with brown hair and brown eyes. Your affiant has observed a teletype response from the California Department of Motor Vehicles for subject MICHAEL ALLEN MARASTI which informs your affiant that said MICHAEL ALLEN MARASTI has been issued a California Driver's License Number A0767374 and that said MICHAEL ALLEN MARASTI'S date of birth is shown as June 9, 1953.

Your Affiant believes that evidence of the commission of felonies, to wit: violation of Section 11352 of the California Health and Safety Code (SALE OF COCAINE), Section 11351 of the California Health and Safety Code (POSSESSION FOR SALE OF COCAINE) and Section 11350 of the California Health and Safety Code (POSSESSION OF COCAINE), and violation of Section 182 of the California Penal Code (CONSPIRACY TO SELL COCAINE), more particularly described above, will be located where described above.

That based upon the above facts, your affiant prays that a Search Warrant be issued with respect to the above location and of the said person and of said vehicle for the seizure of said property and that the same be held under California Penal Code Section 1536 and disposed of according to law.

Subscribed & sworn to before me on this 8th day of November, 1978.

T. G. LOFGREN
Special Agent

JUDGE OF THE MUNICIPAL COURT

JSC7D21/lm

WARRANT #
RECEIVED BY
ON 11-8-78

APPENDIX C

APPENDIX C

SEARCH WARRANT

MUNICIPAL COURT FOR THE SAN JOSE-MILPITAS JUDICIAL DISTRICT,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

FILED
NOV 14 1978
J. J. SPECIALE
CLERK OF THE MUNICIPAL COURT
By Debra Larson Deputy

SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA

To any Sheriff, Constable, Marshal, Policeman or Peace Officer in the County of Santa Clara:

Proof, by affidavit, having been made before me this day by T. G. LOFGREN that there is just, probable and reasonable cause for believing that: Evidence of the commission of felonies, to wit: violation of Section 11352 of the California Health and Safety Code (SALE OF COCAINE), Section 11351 of the California Health and Safety Code (POSSESSION FOR SALE OF COCAINE) and Section 11350 of the California Health and Safety Code (POSSESSION OF COCAINE), and violation of Section 182 of the California Penal Code (CONSPIRACY TO SELL COCAINE), more particularly described below, will be located where described below.

You are therefore commanded, in the daytime, to make search of the premises consisting of a single story, single family residence with attached garage, mustard-beige stucco structure with dark-brown trim and asbestos roof tile located at 1382 Vallejo Drive, San Jose, California. The address 1382 Vallejo Drive is in black letters on the garage door,

located at 1382 Vallejo Drive, San Jose, County of Santa Clara, State of California, for the personal property described as follows:

1. Cocaine;
2. Records of purchase and sale of cocaine;
3. Parapherralia associated with the packaging, weighing, cutting and use of cocaine;
4. Evidence of occupancy of the residence, including but not limited to utility bills, rent receipts, mail, keys;
5. One Hundred Dollar ($100) Federal Reserve Notes as follows: B91847942A, 1974; L40215129A, 1974; F10129609A, 1974; L44245465A, 1974; B71752296A, 1974;

Fifty Dollar ($50) Federal Reserve Notes as follows:
C05032895A, 1969A; A09163511A, 1974;

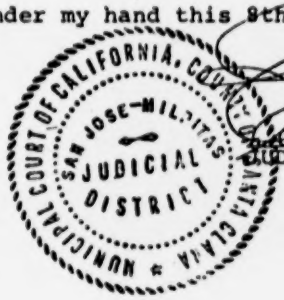
Twenty Dollar ($20) Federal Reserve Notes as follows:
L48579989D, 1974; E32018734C, 1974; B72288543F, 1974;
L59767545D, 1974; A54959063A, 1974; J75424551A, 1969C;
L49378053D, 1974; L45197226A, 1963A, K94306522A, 1974;
G72736061C, 1969C; E08539042C, 1969C; L01561296A, 1977;
B06081627E, 1974; L96967782B, 1969C; L40586155B, 1969A;
L01354771A, 1977; G24251288C, 1969C; L60526051C, 1969C;
B58926038F, 1974; L80809250C, 1974;

6. One Hundred Dollar ($100) Federal Reserve Notes as follows:
A11844347A, 1974; A10625225A, 1974; B24440164A, 1969C;
L43512774A, 1974; J10895892A, 1974; L08934287A, 1969A;
J06607890A, 1969C; B65208672A, 1974; L01752854*, 1974;
L47825219A, 1974; H11482051A, 1974; E09298337A, 1969C;
G18449880A, 1974; J08543447A, 1974; L18039638A, 1969C;
L42177323A, 1974; L47893220A, 1974; B91842339A, 1974;
G33301104A, 1974.

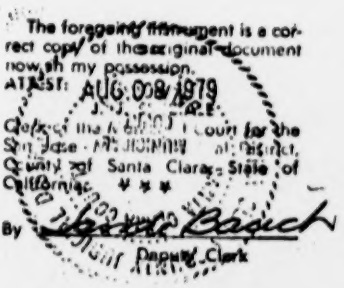
Ten Dollar ($10) Federal Reserve Note as follows:
G73049166D, 1974;

and if you find the same or any part thereof, to hold such property in your possession under California Penal Code Section 1536.

Given under my hand this 8th day of November, 1978.



JUDGE OF THE MUNICIPAL COURT


The foregoing instrument is a correct copy of the original document now in my possession.
ATTEST: AUG 08 1979
Clerk of the Municipal Court for the San Jose-Milpitas Judicial District, County of Santa Clara, State of California
By Deputy Clerk

JSC/D21/lm